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CHARLES ELMORE CR

No. 481.

In the

Supreme Court of the United States

October Term, 1950.

MACARTHUR MINING COMPANY, INC., a Corporation,
Petitioner,

vs.

RECONSTRUCTION FINANCE CORPORATION, *Respondent.*

REPLY BRIEF OF PETITIONER.

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This Court, speaking through Chief Justice Taft, in *Magnum Import Company* v. *De Spoturno Coty,* 262 U. S. 159, 67 L. Ed. 922, stated that a writ of certiorari has two purposes:

(a) To secure uniformity of decisions between the Courts of Appeals, and

(b) To bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort.

Our Petition presents both of these points. First, as set out in the Petition (pages 12-16) there is very definitely a conflict among, not only the opinions of the Court of Appeals for the First Circuit, Eighth Circuit and the District of Columbia Circuit, but between the

opinions of the Eighth Circuit itself on the question of the legal capacity of Respondent to "sue and be sued" and all this despite the holding in *Keifer & Keifer* v. *Reconstruction Finance Corporation, et al.*, 306 U. S. 381.

As to the second point, certainly, the legal efficacy of a Presidential Directive given under Congressionally granted War Powers at a time when the country was in the midst of a global war presents a question of the highest public importance which should be decided by this Court, in the public interest, not only for the purpose of this case, but as a guide in the present national emergency, and for the future.

As to our contention of conflict between the circuits with the Keifer case and among the circuits themselves, we call the Court's attention to the fact that respondent herein failed even to mention, let alone discuss, the case of *Story* v. *Snyder, et al.*, 184 F. (2d) 454 (Petition, p. 12), decided by the United States Court of Appeals, District of Columbia Circuit, which is one of the principal cases upon which Petition is based as showing a conflict among the circuits.

This omission is further unusual in that the crystal clear opinion in the Story case clearly distinguishes cases involving governmental corporations with Congressionally granted power to "sue and be sued" from those involving the United States as such. The opinion was written by Judge George Washington, a former member of the staff of the Solicitor General at the time the Assistant Solicitor General, Mr. Judson, wrote the official opinion involved in this case to the effect that the Directive of President Roosevelt was binding on all administrative agencies (Rec. 19). Judge Washington's opinion is squarely in conflict with the decision of Judge Thomas in the case at bar.

Our further important contention that *Reconstruction Finance Corporation* v. *Childress,* 14,094, December 12, 1950 (Pet. 14-15), decided by the Court of Appeals, Eighth Circuit, reveals a conflict in the Eighth Circuit itself, is disposed of by Respondent with a footnote (Respondent's Brief, p. 32) wherein Respondent apparently considers there is no conflict for the reason that the Childress case was *by* the Reconstruction Finance Corporation and the instant case *against* the Reconstruction Finance Corporation. Respondent would determine the existence or nonexistence of conflicting legal theories by the position of the parties at the bar as to their being plaintiff or defendant and Respondent makes this indefensible contention in the face of the Childress opinion itself which states (Petition, p. 15):

> "In substance this is a challenge to the jurisdiction of the court predicated upon immunity of the government and its agencies. Such immunity was waived in the Act of Congress creating the Reconstruction Finance Corporation, which provides: 'It (R.F.C.) shall have power * * * to make contracts; * * * to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal; * * *' 15 U. S. C. 603, 1446 Supp., 15 U. S. C. A. 603.
>
> (a) The statute does not state expressly that a party against whom the Reconstruction Finance Corporation brings suit may appear and defend, but such right is implied. To hold otherwise would violate the due process clause of the 14th Amendment, for it would sanction the breaking of a contract by the Reconstruction Finance Corporation with a citizen and the taking of his property by aid of the court without a hearing. And since he may defend, the rules governing the trial and decision are the same as they would be in a case where both parties are private citizens. *Kiefer & Kiefer* v. *R. F. C.,*

306 U. S. 381; *F. H. A.* v. *Burr,* 309 U. S. 242; *R. F. C.* v. *Menihan Corp., et al.,* 312 U. S. 81. The motion for rehearing will accordingly be dismissed."

With respect to the legal efficacy of the Presidential Directive, in respect to the contract here involved, Respondent disposes of that all-important point of public interest in one paragraph (Respondent's Brief, p. 29), citing cases not in point since they definitely did not involve *Congressionally authorized* wartime directives of the President of the United States. In other words, the Directive in this case rose above the policy level and became, as Judge Collet held (R. 17), "a commitment" to your Petitioner and as Mr. Harold Judson, Assistant Solicitor General, stated (R. 19). "an authoritative statement of the executive, to be applied by the executive agencies of the government to the full extent of their legal powers."

The mainly relied upon defense of Respondent to this action is the same now as it was in its first pleading filed in the District Court, namely, that exclusive jurisdiction of this cause is vested in the Emergency Court of Appeals. Eight and one-half pages of its argument is devoted to this point—the two really important points regarding the petition being disposed of in three and one-half pages.

It is difficult to understand Respondent's constant hammering on this point (unless it be that it feels it must win on this point or lose all) when it *knows* that a protest to the Price Administrator was a condition precedent to the right to invoke the jurisdiction of that court (Sections 203, 204 of the Emergency Price Control Act) and when in its brief filed herein (p. 31) it states that in addition to the MRC, the OPA, WPB and others were in-

volved in the Premium Price Plan. In other words, Respondent must know that a protest to the OPA because of an inadequate premium would have been a nullity. This is established by their principal witness, Mr. Hayes, who was at one time chairman of the Quota Committee and later one of the three reviewing officers of that committee wherein he stated at the trial of this cause (R. 290) that there was no method of protest or appellate remedy from an order of the Quota Committee under the Premium Price Plan.

Despite these other administrative agencies being involved in the administration of the Premium Price Plan, it is undisputed that at all times the Metals Reserve Company remained the only *Congressionally* authorized corporation whose purpose it was to deal in the acquisition of critical metals, and thus the only legal entity capable of and charged with the duty of fully carrying out the Presidential Directive. This fact the President must have known when he issued the Directive.

Respondent in its brief (p. 25) cites a number of meat cases to support its position. Not one metals case is cited for the obvious reason that there could not be any under the operation of the Premium Price Plan. The OPA, on the other hand, had sole control over meat subsidies and thus there was a way to lodge a protest which would permit invoking the jurisdiction of the Emergency Court of Appeals.

Respondent's position that the Emergency Court of Appeals had exclusive jurisdiction of this metal case is untenable. Members of this Court are earnestly referred to the two studious and exhaustive opinions by Judge Reeves on this matter of jurisdiction of the Emergency Court of Appeals (Rec. 37; Rec. 45; 82 Fed. Supp. 455). Judge Reeves' first opinion overruling defendant Recon-

struction Finance Corporation's Motion to Dismiss (Rec. 37) is not published. It, too, clearly demonstrates that the Emergency Price Control Act had nothing to do with the arrangement for strategic and critical materials provided for by a separate and distinct government agency and therefore the Emergency Court of Appeals had no jurisdiction of this cause. They should be persuaded that Respondent is wrong on this point. In any event, this Court should grant certiorari so that this question looming so large and important, in Respondent's consideration, should be laid at rest by this Court.

Further, during the period complained of in this case (1943 to 1947) of over 500 cases decided by the Emergency Court of Appeals (Petition Rehearing, Eighth Circuit, p. 28) it is not denied that that there was not one metals case.

Members of this Court cannot help being impressed by this fact in that it definitely shows the bench and bar gave Respondent's theory no credence in practice. Your esteemed Chief Justice who sat on the Emergency Court of Appeals knows that there was an entirely different administrative program between metals and meat.

In addition, it is apparent from the rules of the Emergency Court of Appeals that the Court had determined its own jurisdiction to be limited to matters involving the Price Administrator, and he alone. For example, Rule 11 of that court provides:

> "(a) Form. The complaint shall contain a caption setting forth the name of the court and title of the case, giving the name of the complaintant, versus the person holding the office of Price Administrator as respondent, *e.g.*:
>
> *John Doe* v. *Leon Henderson, Price Administrator.*"

Other rules, with respect to the filing of briefs, etc., all contemplate the Price Administrator as the only person concerned other than the complainant. We have no doubt that had we mistakenly attempted to invoke that court's jurisdiction of this matter, counsel would have immediately moved to dismiss on the ground that that court had no jurisdiction and they would have been right, for the very simple reason, to reiterate, that the Price Administrator had absolutely nothing to do with this matter except to vote as a member of the Quota Committee.

Too, we want it understood that the position of Petitioner is unique in comparison with other marginal producers of lead and zinc in that it continually protested against its quotas and also it was advised to await full production before proper payments by Metals Reserve Company could be arrived at. In other words, a decision in this case favorable to your Petitioner does not involve re-opening quotas definitely closed by acceptance or lack of protest on the part of other producers. This is made clear by the opinion of the Honorable John C. Collet (R. 18).

Respondent's brief is also self-contradictory in that when it attempts to prove exclusive jurisdiction of the Emergency Court of Appeals, Metals Reserve Company is conceded to be the activating force and responsible entity in the carrying out of the metals program; however, when it argues the contract phase of the case, it immediately changes direction and rush in OPA, WPB, etc., as reinforcements to prove that Metals Reserve Company was only incidentally involved. Metals Reserve Company's legal position in this case, insofar as Respondent is concerned, changes with the phase of the case being argued.

Finally, we submit that any petition for certiorari which requires a brief in opposition consisting of a statement of facts of eighteen pages plus twelve and one-half pages of argument must have some merit. In fact, Respondent's brief is not a brief in opposition—*it is a brief on the merits covering* the entire case. Most of Respondent's statement of facts (first 20 pages out of a total of 33 pages contained in the brief) have but little to do with the situation now before this Court; to-wit, matters of conflict between the Courts of Appeals and second, matters of public importance. Respondent devotes but little attention thereto in its argument and less in its statement. The office of certiorari is only for the purposes defined by Justice Taft and briefs should be confined thereto in concise fashion, and according to Rule 38 of this Court the petition shall contain a "summary and short statement of the matter involved." We have conformed to this rule, but Respondent has failed to do so. In fact, Respondent's statement amounts to a complete argument of the facts in the case from its point of view and does not develop or inform the Court as to Petitioner's side of the case.

For example, Respondent, on pages 10 and 11 of its statement, refers caustically to the loan from Respondent to Petitioner. However, counsel fails to mention this loan was made on blocked out known ore reserves approved by their client's own engineers. In other words, it was like making a loan on wheat in the bin or oil in the barrel. Respondent further fails to mention that this loan was entirely paid off with interest.

Respondent would use the office of certiorari to argue the case on the merits. Respondent's statement would be perfectly in order if this Court should grant certiorari.

A matter involving lack of uniformity of decisions among the circuits; the decisions of one of the circuits

itself, to-wit, the eighth; the conflict between some of said decisions and a decision of this Court; and the unusual number of matters of public importance involved warrant the issuance of certiorari herein, which we pray be granted.

Respectfully submitted,

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